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19 UNITED STATES BANKRUPTCY COURT

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21 DISTRICT OF NEVADA

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1 COMES NOW CHRISTINA A. DiEDOARDO AND AMBERLEA S. DAVIS and
2 respectfully move this Court to dismiss the Chapter 11 case filed by Free and Clear Holding
3 Company III LLC pursuant to 11 U.S.C. 1112(b)(1) and to permit them leave to withdraw from
4 the case pursuant to NV RPC 1.16(a)(1). Said Motion shall consist of this preamble, the attached
5 Memorandum of Points and Authorities, the Declarations of Christina A. DiEdoardo and
6 Amberlea S. Davis and the complete files and records of this action.
7

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I.**

10 **BACKGROUND**

11 This case was filed on an emergency basis on May 27, 2011. Because both Ms.
12 DiEdoardo and Ms. Davis had experienced significant difficulties in obtaining necessary
13 information from the principals involved with Free and Clear Holding Company II LLC and
14 Secured Assets Group (*see In Re Free and Clear Holding Company II LLC*, Case No. 11-15145),
15 they had requested—and they believed at the time, received—adequate assurances that the same
16 issues would not reoccur in this case.

17 Alas, this did not occur and Ms. DiEdoardo and Ms. Davis have been unable, despite
18 their best efforts, to obtain necessary information from their client to complete their schedules,
19 let alone to comply with the requests of the United States Trustee.

20 On June 13, 2011 and June 14, 2011 Ms. DiEdoardo and Ms. Davis held a series of
21 conferences with their client. On June 14, 2011, Mr. Garth Johnson, the president of Free and
22 Clear Holding Company III, finally authorized Ms. DiEdoardo and Ms. Davis to not oppose a
23 pending motion to dismiss *In Re Free and Clear Holding Company II LLC*, Case No. 11-15145
24 filed by the United States Trustee and to file a motion to dismiss this case.
25

1 In the interest of conserving judicial, trustee and creditor resources, this Motion followed.
2

3 **II.**

4 **ARGUMENT**

5 **A. Dismissal Is Appropriate Under 11 U.S.C.1112(b)(1)**

6 In pertinent part, 11 U.S.C. 1112(b) (1) provides “after notice and a hearing, the court
7 shall convert a case under this chapter to a case under chapter 7 **or dismiss a case under this**
8 **chapter, whichever is in the best interests of creditors** and the estate, for cause.” (Emphasis
9 added).

10 In the instant case, the Debtor in Possession has been unable to provide their attorneys
11 with documentary information needed to complete their schedules and to comply with the
12 necessary and proper requests from the office of the United States Trustee. This constitutes
13 sufficient “cause” to support dismissal under 11 U.S.C. 1112(b) (4) (F).

14 **B. Dismissal Is In The Best Interests of Creditors**

15 Since it has become clear that the DIP will not be able to propose a viable reorganization
16 plan, much less get one confirmed, it is in the interest of creditors to dismiss the case and lift the
17 stay so that they may pursue any appropriate remedies against the DIP outside of this Court.

18 **DECLARATION OF CHRISTINA A. DiEDOARDO**

19 1. I am an attorney licensed to practice law before all of the Courts of the States of
20 Nevada and California as well as before the Ninth Circuit Court of Appeals. I have
21 personal knowledge of all facts contained in this declaration.

22 2. Since the filing of this case on May 27, 2011 and its companion matter, In Re Free
23 and Clear Holding Company II LLC, on April 6, 2011, it has been incredibly difficult

1 for me to obtain the information I needed to effectively represent the DIP from the
2 DIP.

3 3. I have persevered because I relied on repeated assurances from the DIP and from the
4 related entities to it (including but not limited to Secured Assets Group) that the
5 problems would be rectified.

6 4. Unfortunately, that has not occurred. While I believe the DIP is and has been
7 operating in good faith with regard with their attempts to locate the data, as an officer
8 of the Court I cannot continue to represent a Debtor which is incapable or unwilling
9 to comply with information requests issued by the UST in accordance with its
10 statutory responsibilities. Furthermore, I cannot in good faith oppose what appears to
11 be a justified motion to dismiss based on the DIP's failure to meet its disclosure
12 obligations in In Re Free and Clear Holding Company II LLC and do not wish to
13 needlessly consumer judicial or trustee time before a similar motion is inevitably filed
14 in this case.

15 5. In addition, last week I became aware for the first time of certain material facts
16 involving a key individual involved in one of the related entities which had not been
17 disclosed to me either by the individual or by the DIP.

18 6. Pursuant to NV RPC 1.16(a) (1), an attorney is **required** to withdraw, subject to the
19 rules of the appropriate tribunal, where continued representation would "result in
20 violation of the Rules of Professional Conduct or other law".

21 7. I respectfully believe that continued representation of the Debtor would cause me to
22 violate the Rules of Professional Conduct and therefore respectfully request leave to
23 withdraw from this matter.

24

I declare under penalty of perjury that the foregoing is true and correct except as to those
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matters stated on information and belief and as to those matters I believe them to be true.

Dated this 15th day of June 2011

/S/*Christina A. DiEdoardo*

DECLARATION OF AMBERLEA S. DAVIS

- 1 1. I am an attorney licensed to practice law before all of the Courts of the State of
2 Nevada.
- 3 2. I have worked with Ms. DiEdoardo since the first day of representation of the DIP in
4 this case and have served as the primary point of contact between the DIP and Ms.
5 DiEdoardo's office.
- 6 3. Like her, I have repeatedly attempted to get the DIP to provide the documentation
7 requested by the UST without success.
- 8 4. Like her, I believe continued representation of the DIP in these circumstances would
9 violate my obligations under NV RPC 1.16(a)(1),
- 10 5. I personally heard Mr. Johnson authorize me, on June 14, 2011, to authorize Ms.
11 DiEdoardo to move to dismiss this case.
- 12 6. For the foregoing reasons I respectfully request that the Court allow me leave to
13 withdraw as co-counsel for the DIP.

I declare under penalty of perjury that the foregoing is true and correct except as to those
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matters stated on information and belief and as to those matters I believe them to be true.

DATED this 15th day of June, 2011

/S/*Amberlea S. Davis*
Amberlea S. Davis

II. CONCLUSION

For the reasons set forth above, Movants respectfully request that this Court DISMISS the instant Chapter 11 proceeding; GRANT Ms. DiEdoardo and Ms. Davis leave to withdraw as attorneys of record and GRANT all such and other relief as it deems just and proper.

Dated this 15th day of June, 2011

/S/Christina A. DiEdoardo
Christina A. DiEdoardo
Nevada Bar No. 9543

CERTIFICATE OF SERVICE

I am Christina A. DiEdoardo, an attorney licensed to practice law before all of the Courts of the States of Nevada and California as well as before the Ninth Circuit Court of Appeals. On June 15th 2011 I sent a true and complete copy of the foregoing MOTION TO DISMISS CASE AND MOTION TO WITHDRAW AS COUNSEL to all parties who have appeared in this action via the Court's CM/ECF system.

In addition, I sent a copy of the foregoing documents to the following parties who are not CM/ECF participants via U.S. Mail

Mr. Garth Johnson
Free and Clear Holding Company III LLC
4262 Blue Diamond Road Building 102 Suite 120
Las Vegas NV 89139

I declare under penalty of perjury that the foregoing is true and correct.

/S/ *Christina A. DiEdoardo*